

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BEATRIZ JIMENEZ, ET AL.,

v.

ROSENBAUM-CUNNINGHAM, INC.,
ET AL.

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CIVIL ACTION

NO. 07-CV-1066

ORDER

AND NOW, this 29th day of February, 2008, upon consideration of Defendant Dave & Buster's, Inc.'s Motion To Dismiss Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), (Doc. No. 8), Plaintiff's response thereto, (Doc. No. 10), and Defendant's Reply (Doc. No. 13.), it is ORDERED that Defendant's Motion is DENIED.¹

IT IS SO ORDERED.

BY THE COURT:

/s/ R. Barclay Surrick
U.S. District Judge

¹ Plaintiffs contend that Defendant Dave & Buster's, Inc. ("D&B") is liable as a joint employer under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.* For instance, Plaintiffs' complaint alleges that Plaintiffs did substantial work on the premises of D&B, and that D&B managers locked them inside the premises for much of their work shift. (Doc. No.1, ¶ 40, 50-51, 67-68, 80-81, 102-103, 115-116, 124-125, 135-136, 146-147, 155-156, 167-168, 177-178, 188-189.) Plaintiffs allege that D&B exerted considerable control over the manner in which they performed their work, including supervising their work. (*Id.*) Plaintiffs further allege that, pursuant to Defendant Rosenbaum-Cunningham, Inc.'s business arrangement with D&B, Plaintiffs worked extensive, unpaid overtime, presumably on the premises of D&B. (*Id.* at ¶ 44.) Plaintiffs have alleged facts sufficient to state a claim against Defendant Dave & Buster's, Inc. Whether the actual facts will support the joint employer claim can better be determined after discovery.

